Board of Alien Labor Certification Appeals 800 K Street, NW, Suite 400-N

Washington, DC 20001-8002

(202) 693-7300 (202) 693-7365 (FAX)

DATE: September 21, 2000

CASE NO. **2000-INA-152** 

*In the Matter of:* 

## IWAMOTO AND GEAN FARM

Employer,

on behalf of

#### **GUILLERMO SANCHEZ-ADAME**

Alien.

Appearance: Jean-Pierre Karnos, Esq.

Santa Ana, California

Certifying Officer: Pandora Wong

San Francisco, California

Before: Vittone, Burke and Wood

Administrative Law Judges

### **DECISION AND ORDER**

**Per Curiam.** This case arises from Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of alien labor certification for the position of Field Crew Supervisor.<sup>1</sup>

# **STATEMENT OF THE CASE**

On June 23, 1995, Employer, Iwamoto and Gean Farm filed an application on behalf of

C.F.R. § 656.27(c).



<sup>&</sup>lt;sup>1</sup>Permanent alien labor certification is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20. We base our decision on the record upon which the CO denied certification and Employer's request for review, as contained in the appeal file ("AF"), and any written arguments. 20

Guillermo Sanchez-Adame ("Alien") to fill the position of Field Crew Supervisor. (AF 18). Two years of experience in the job offered and eight years of grade school were required.

The CO issued a Notice of Findings (NOF) on September 15, 1999, proposing to deny certification because Employer had failed to document the lawful rejection of one U.S. applicant. (AF 13) The CO noted that the local Employment Development Department of the State of California ("EDD") had forwarded the resumes of applicants to Employer, including that of the applicant at issue. While Employer contends that he contacted this applicant promptly, invited him to an interview, and the applicant never attended same or requested that Employer reschedule, Employer never stated specifically how and when the applicant was contacted.<sup>2</sup> Employer was advised to submit rebuttal which documented persuasively how and when Employer contacted the U.S. applicant in question. The CO cited the case of *Gencorp*, 1987-INA-659 (January 13, 1988) (en banc), in order to advise Employer of the standard of documentation required.

Employer submitted rebuttal on October 18, 1999. (AF 7). Therein, Employer stated that the applicant's resume was received on March 11, 1995, and "timely contact" was made with the applicant. Employer stated that the call was made a few days after receiving the resume, and an appointment was scheduled which the applicant did not attend. The applicant did not reschedule, and Employer rejected the applicant since it appeared he was no longer interested in the position. Employer further asserted that given the applicant's conduct, he displayed a lack of professionalism. For these reasons, he was rejected.

The Regional Administrator issued a Final Determination (FD) on November 10, 1999, (AF 5), finding that Employer's description of its attempts to recruit the U.S. applicant in question did not meet the standard of proof of documentation required by *Gencorp*. It was pointed out that the information provided by Employer in its rebuttal was so nonspecific as to be insufficient to meet its burden of proof of documenting how the applicant was truly unavailable. On December 6, 1999, Employer requested review of the denial of labor certification. (AF 1).

Employer has submitted a brief dated March 21, 2000. Therein, it is argued that it sufficiently documented the job related reasons for its rejection of the U.S. applicant at issue herein. In this brief, Employer repeats the sequence of events it set forth in its rebuttal with regard to its attempts to interview this applicant.

### **DISCUSSION**

Where the CO requests a document or information which has a direct bearing on the resolution of the issue and is obtainable by reasonable effort, the employer must produce it. *Gencorp*, 1987-INA-659 (Jan. 13, 1988)(*en banc*). Failure to submit documentation reasonably requested by the CO

<sup>&</sup>lt;sup>2</sup> In that letter to the EDD, dated May 16, 1999, Employer stated that this applicant was "promptly contacted via telephone and cordially invited to an interview session at the job site." (AF 32)

warrants denial of labor certification. *Rouber International*, 1991-INA-44 (March 31, 1994). Employer herein failed to produce the requested documentation of contacts made with a seemingly qualified U.S. applicant. The manner of contact is not at issue herein; however, proof of that contact is. Employer was specifically requested to provide proof of the manner of contact and the time of contact. No telephone records have been submitted to substantiate contact, nor has any reason been offered as to why same has not been submitted.

Employer was put on notice that the unsupported assertions of its owner, alone, would not be sufficient documentation. Despite this, Employer's rebuttal consisted of bare assertions regarding contact with this applicant, with no supporting documentation. Based upon Employer's failure to provide documentation reasonably requested by the CO, we find that certification was properly denied.

### **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel:

Todd R. Smyth, Secretary to the Board of Alien Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of Board decisions; or (2) when the proceeding involves a question of exceptional importance. Petitions for review must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400 North
Washington, DC 20001-8002.

Copies of the petition must also be accompanied by a written statement setting forth the date and manner of that service. The petition must specify the basis for requesting review by the full Board, with supporting authority, if any, and shall not exceed five double-spaced typed pages. Responses, if any,

must be filed within ten days of service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of a petition the Board may order briefs.